IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL
Civil Writ Petition No. 698 of 2004 (S/S)

Smt. Reshmawati
W/o Late Shri Preetam Singh
R/o Village – Nausar
Post – Nausar
District – Nainital … Petitioner

Versus

1. Secretary, Irrigation Department, Dehradun Uttaranchal

2. Engineer-in-Chief, Irrigation Department

3. Chief Engineer, Tubewell Division, Irrigation Department, Dehradun Uttaranchal

4. Superintendent Engineer, Tubewell Division, Haldwani (Nainital), Uttaranchal

5. Executive Engineer, Nalkoop Khand, Haldwani

6. District Magistrate, Nainital

7. District Panchayat Raj Adhikari, Udham Singh Nagar

8. Mukhya Vikas Adhikari, Udham Singh Nagar … Respondents

Sri S.B. Dubey, learned counsel for the petitioner
Sri Harendra Belwal, Brief Holder for the State

Hon'ble B.C. Kandpal, J.

By way of this writ petition, the petitioner has sought a writ of mandamus for commanding the respondents to appoint her under the Dying in Harness Rules in place of her deceased husband who died during permanent employment.

Brief facts giving rise to this writ petition are that the husband of the petitioner, namely, Preetam Singh was posted as a per time Tubewell Operator w.e.f. 27.01.1990. He died

on 01.02.2004 and at the time of his death he was working as Tubewell Assistant in the pay scale of Rs. 550/- p.m. vide order dated 18.04.1992.

The petition further reveals that after the deathe of Preetam Singh, the petitioner has applied for a job under Dying in Harness Rules, but her application was rejected.

Heard learned counsel for the parties and perused the record.

Learned counsel for the petitioner first of all invited my attention towards the judgment cited in 1998 U.P.L.B.E.C. page 9, Saira Khatoon Vs. State of U.P. & Others and submitted on the basis of the aforesaid judgment that all the part time Tugewell Opearators were equal to full time Tubewell Operators and were entitled to equal pay to full time Tubewell Operator.

Learned counsel for the petitioner has also submitted that her application has been rejected by the opposite party no. 5 on arbitrary ground vide order dated 27.02.2004 and the respondent no. 5 while rejecting the application did not consider the principle laid down by the Hon'ble Supreme Court in the matter of providing the appointment on compassionate ground.

The Hon'ble Supreme Court in decision cited in ***1989 (4) SCC page 468 Sushma Gosain and others Vs. Union of India & others*** has observed as follows:-

> *"We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earned in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep*

such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant."

It is thus quite clear that the object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crises resulting due to death of the bread-earned which has left the family in penury and without any means of livelihood. Out of pure humanitarian consideration and having regard to the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made for giving gainful employment to one of the dependants of the deceased who may be eligible for such appointment. Such a provision makes a departure from the general provisions providing for appointment on the post following a particular procedure.

On the basis of the discussion made by me as above, I feel it just and proper to direct respondent no. 5 to consider the petitioner claim for compassionate appointment and take appropriate decision on her representation to be made by her.

The petitioner is allowed. The petitioner shall move a fresh representation before the respondents within a period of 15 days and the respondent no. 5 is directed to consider the representation to be moved by the petitioner within a period of one month by passing speaking and reasoned order from the date of production of representation by the petitioner.

In view of the above observations, the writ petition is finally disposed of.

(B.C. Kandpal, J.)

13th June, 2005
Shiv